



*Agenda Item 2016 - 067*

5000 Diamondhead Circle • Diamondhead, MS 39525-3260

Phone: 228.222.4626 Fax: 228.222.4390

[www.diamondhead.ms.gov](http://www.diamondhead.ms.gov)

April 14, 2016

Mayor and Councilmembers  
5000 Diamondhead Circle  
Diamondhead, MS 39525

Dear Mayor and Councilmembers:

Re: Final Payment, Substantial Completion and Closeout – Drainage Project, Kapalama Ahekololo, Apua and Iona

Attached for your review and consideration is the final pay request in the amount of \$21,066.00 to DNA Underground, LLC for the drainage projects at Kapalama Ahekololo, Apua and Iona. Also for acceptance is Certificate Substantial Completion and close out documents.

If you find the documents to be in order, it is recommendation to proceed with approval.

Thank you in advance for your consideration and approval in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Clovis Reed".

Clovis Reed  
City Manager

CR:jk

# SEYMOUR ENGINEERING

Civil Engineers and Professional Land Surveyors



925 Tommy Munro Drive, Suite G  
Biloxi, Mississippi 39532  
Phone: 228-385-2350  
Fax: 228-385-2353  
Toll Free: 888-385-2350

April 14, 2016

Mr. Clovis Reed  
City Manager  
City of Diamondhead  
5000 Diamondhead Circle  
Diamondhead, MS 38525

**Re: Diamondhead Drainage Project – Kapalama Ahecolo Apua and Iona  
Pay Request No 3 (Final)**

Dear Mr. Reed:

Enclosed you will find Final Pay Request No. 3 for the above referenced project. The work has been performed and is acceptable. I have also attached the close out documents including the Release of Liens, the Warranty, the Summary Change Order, the Certificate of Substantial Completion and the Consent of Surety. We recommend to the City of Diamondhead, that DNA Underground, LLC be paid the requested amount of \$21,066.00.

Please sign and return a copy of the Summary Change Order and Substantial Completion forms for our records.

Respectfully submitted,

SEYMOUR ENGINEERING

Sincerely  
SEYMOUR ENGINEERING

Roland J. "Joey" Diaz, Jr., P.E. (MS 18669)  
Project Engineer

Cc: Mr. Richard Sullivan, Mr. David Rivers, Ms. Jeannie Klein



ENGINEERS JOINT CONTRACT  
DOCUMENTS COMMITTEE

### Contractor's Application for Payment No. 3

Application Period: 2/12/16 - 3/22/16		Application Date: 3/22/2016	
To (Owner):	From (Contractor):	Via (Engineer):	
Diamondhead Drainage Kapaemaha, Akahola, Apia, Samoa	DNA Underground LLC	Seymour Engineering 925 Tommy Munro Dr., Ste. G Biloxi, MS 39532	
Owner's Contract No.:	Contractor's Project No.:	Engineer's Project No.:	

#### Application For Payment Change Order Summary

Approved Change Orders Number	Additions	Deductions	1. ORIGINAL CONTRACT PRICE
1	\$2,321.00		\$ 184,900.00
			2. Net change by Change Orders..... \$ 2,321.00
			3. Current Contract Price (Line 1 + 2)..... \$ 187,221.00
			4. TOTAL COMPLETED AND STORED TO DATE
			(Column F total on Progress Estimates)..... \$ 187,221.00
			5. RETAINAGE:
			a. X \$174,900.00 Work Completed..... \$
			b. X Stored Material..... \$
			c. Total Retainage (Line 5.a + Line 5.b)..... \$ 187,221.00
			6. AMOUNT ELIGIBLE TO DATE (Line 4 - Line 5.c)..... \$ 166,155.00
			7. LESS PREVIOUS PAYMENTS (Line 6 from prior Application)..... \$ 21,066.00
			8. AMOUNT DUE THIS APPLICATION..... \$ 145,089.00
			9. BALANCE TO FINISH, PLUS RETAINAGE
			(Column G total on Progress Estimates + Line 5.c above)..... \$

#### Contractor's Certification

The undersigned Contractor certifies, to the best of his knowledge, the following:  
(1) All previous progress payments received from Owner on account of Work done under the Contract have been properly applied to discharge Contractor's legitimate obligations incurred in connection with the Work.  
(2) Title to all Work, materials and equipment incorporated in said Work, or otherwise used in the performance of the Work, is hereby assigned to Owner as of the date of payment hereof and all rights in said Work, materials and equipment are hereby assigned to Owner as of the date of payment hereof.  
(3) All the Work covered by this Application for Payment is in accordance with the Contract.

State of Mississippi County of Harrison

Subscribed and sworn before me this 14 day of April 2016

Notary Public: *Ronald A. Ding*

My commission Expires: *May 21, 2019*

Contractor Signature

By: *Michael D. Duhon*

Date:

4/14/2016

Approved by:

\$ 21,066.00

(Line 8 or other - attach explanation of the other amount)

*Ronald A. Ding* 4/14/16  
(Engineer) (Date)

(Line 8 or other - attach explanation of the other amount)

(Owner) (Date)

Funding or Financing Entity (if applicable) (Date)

## Contractor's Application

## DNA Underground / Diamondhead Drainage improvements

### Application 1

## Application 1

A															B		C	E	C	D		E	F	
Item				Contract Information																				
Bid Item No.	Description	Item Quantity	Units	Unit Price	Total Value	of Item (\$)	Quantity Previous App	Value Previous	Estimated Quantity Installed	Value of Work Installed to Date	Materials Presently Stored	Total Completed and Stored to Date (E+F+C)	% (H / B)	Balance to Finish (I)	(F)									
1	lump sum bid	1	LS	\$ 174,900.00	\$	174,900.00	1.00	\$ 174,900.00				\$174,900.00	100.0%	\$	-									
2	contingency	1	LS	\$ 10,000.00	\$	10,000.00		\$ -	1	\$10,000.00		\$10,000.00	100.0%	\$	-									
3				\$ -	\$	-		\$ -						\$	-									
4				\$ -	\$	-		\$ -						\$	-									
5				\$ -	\$	-		\$ -						\$	-									
6				\$ -	\$	-		\$ -						\$	-									
7				\$ -	\$	-		\$ -						\$	-									
CO #1	Water & Sewer Interferences	1	LS	\$ 2,321.00	\$	2,321.00		\$ -	1	\$2,321.00		\$2,321.00	100.0%	\$	-									

# CONTRACTOR'S AFFIDAVIT OF RELEASE OF LIENS

AIA Document G706A

OWNER	<input type="checkbox"/>
ARCHITECT	<input type="checkbox"/>
CONTRACTOR	<input type="checkbox"/>
SURETY	<input type="checkbox"/>
OTHER	<input type="checkbox"/>

TO OWNER:  
(Name and address)

City of Diamondhead  
500 Diamondhead Circle  
Diamondhead, MS 39525

ARCHITECT'S PROJECT NO.:

CONTRACT FOR:  
**Drainage Improvements**

PROJECT:  
(Name and address)

Drainage Improvements  
Kapalama Drive & Ahakola Circle  
Apua Street & Iona Street

CONTRACT DATED:  
**December 1, 2015**

STATE OF: **Mississippi**  
COUNTY OF: **Harrison**

The undersigned hereby certifies that to the best of the undersigned's knowledge, information and belief, except as listed below, the Releases or Waivers of Lien attached hereto include the Contractor, all Subcontractors, all suppliers of materials and equipment, and all performers of Work, labor or services who have or may have liens or encumbrances or the right to assert liens or encumbrances against any property of the Owner arising in any manner out of the performance of the Contract referenced above.

EXCEPTIONS:

**None**

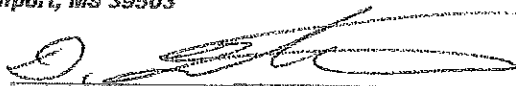
## SUPPORTING DOCUMENTS ATTACHED HERETO:

- x** 1. Contractor's Release or Waiver of Liens, conditional upon receipt of final payment.
- na** 2. Separate Releases or Waivers of Liens from Subcontractors and material and equipment suppliers, to the extent required by the Owner, accompanied by a list thereof.

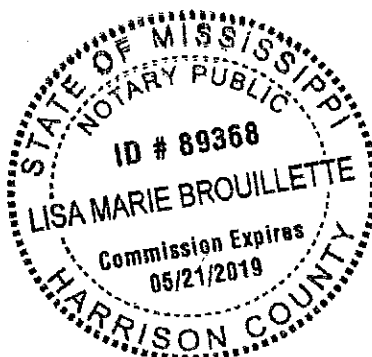
CONTRACTOR:  
(Name and address)

**DNA Underground, LLC**  
**16101 S Swan Road**  
**Gulfport, MS 39503**

BY:

  
(Signature of authorized representative)

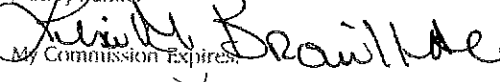
**Dustin Gartman / Owner**  
(Printed name and title)



Subscribed and sworn to before me on this date:

**12 April 16**

Notary Public:

  
My Commission Expires:



Contractor's Guarantee and Warranties

Project / Owner

Project: Drainage Improvements, Kapalama Drive  
& Aheolo Circle, Apua Street & Iona Street

Owner: City of Diamondhead

Address: 500 Diamonhead Circle

Diamondhead, MS 39525

City State Zip Code

Contractor

Name: DNA Underground, LLC

Address: 16101 S Swan Road

Gulfport, MS 39503

City State Zip Code

Begin Warranty Date: March 29, 2016

End Warranty Date: March 29, 2017

TO OWNER:

The undersigned hereby certifies that DNA Underground, LLC does hereby guarantee all work performed on the above captioned Contract to be free from defective materials and workmanship for a period of (1) year or such longer period of time as may be called for in the Contract Documents for such portions of the work.

By: [Signature]

Dustin Gartman, Owner

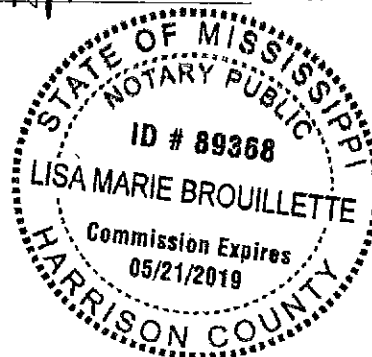
State of: Mississippi

County of: Harrison

Subscribed and sworn to before me this 12 day of April 2016.

Notary Public: Lisa M. Brouillette

My Commission Expires: May 21, 2019



## SUMMARY CHANGE ORDER

PROJECT: Diamondhead Drainage Project  
Kapalama, Ahekololo, Apua, Iona

CHANGE ORDER NUMBER: 1

DATE: April 8, 2016

To Contractor:

CONTRACT PROJECT NO: \_\_\_\_\_

CONTRACT DATE: Dec 1, 2015

CONTRACT FOR: \_\_\_\_\_

The Contract is changed as follows:

This is a Summary Change Order that increases the contract amount by \$2,321.00. The increase is due to the Water and Sewer line interferences that the contractor encountered at the Kapalama Drive Crossing site.

### TOTAL THIS CHANGE ORDER

**Not valid until signed by the Owner, Engineer and Contractor.**

The original Contract Sum	\$ 184,900.00
Net change by previously authorized Change Orders	\$ 0.00
The Contract Sum prior to this Change Order was	\$ 184,900.00
The Contract Sum will be <u>increased</u> by the amount of	\$ 2,321.00
The new Contract Sum including this Change Order will be	\$ 187,221.00

The Contract Time will be the same 120 days.

The Date of Substantial Completion as of the date of this Change Order therefore is  
April 5, 2016

CONTRACTOR

ENGINEER

OWNER

By: [Signature]

By: Rolando D. Dierff

By: \_\_\_\_\_

Date: 4-12-16

Date: 4/14/16

Date: \_\_\_\_\_

# Certificate of Substantial Completion

Project: <u>Diamondhead Drainage Project – Kapalama, Ahekolō, Apua, &amp; Iona</u>	Owner: <u>City of Diamondhead, MS</u>	Owner's Contract No.: _____
Contract: <u>Diamondhead Drainage Project – Kapalama, Ahekolō, Apua, &amp; Iona</u>		Date of Contract: <u>12-1-2015</u>
Contractor: <u>DNA Underground, LLC</u>		Engineer's Project No.: <u>13-070.04</u>

This [tentative] [definitive] Certificate of Substantial Completion applies to:

☒ All Work under the Contract Documents: ☐ The following specified portions:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

March 29, 2016

Date of Substantial Completion

The Work to which this Certificate applies has been inspected by authorized representatives of Owner, Contractor and Engineer, and found to be substantially complete. The Date of Substantial Completion of the Project or portion thereof designated above is hereby declared and is also the date of commencement of applicable warranties required by the Contract Documents, except as stated below.

A [tentative] [revised tentative] [definitive] list of items to be completed or corrected, is attached hereto. This list may not be all-inclusive, and the failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

The responsibilities between OWNER and CONTRACTOR for security, operation, safety, maintenance, heat, utilities, insurance and warranties shall be as provided in the Contract Documents except as amended as follows:

☐ Amended Responsibilities ☒ Not Amended

Owner's Amended Responsibilities:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Contractor's Amended Responsibilities:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The following documents are attached to and made part of this Certificate:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

This Certificate does not constitute an acceptance of Work not in accordance with the Contract Documents nor is it a release of Contractor's obligation to complete the Work in accordance with the Contract Documents.

Rolando J. Diaz Jr.  
Executed by Engineer

4/7/2016

Date

[Signature]  
Accepted by Contractor

4-12-16

Date

Accepted by Owner

Date



**CONSENT OF SURETY  
TO FINAL PAYMENT**

*ALA Document G707*

Bond No. 1001055434

OWNER	<input type="checkbox"/>
ARCHITECT	<input type="checkbox"/>
CONTRACTOR	<input type="checkbox"/>
SURETY	<input checked="" type="checkbox"/>
OTHER	<input type="checkbox"/>

**TO OWNER:**

*(Name and address)*

City of Diamondhead  
5000 Diamondhead Circle  
Diamondhead, MS 39525

**PROJECT:**

*(Name and address)*

Drainage Improvements Kapalama Drive and Ahekololo Circle, Apua Street and Iona Street

ARCHITECT'S PROJECT NO.:

CONTRACT FOR: Same as Below

CONTRACT DATED: December 1, 2015

In accordance with the provisions of the Contract between the Owner and the Contractor as indicated above, the  
*(Insert name and address of Surety)*

U.S. Specialty Insurance Company  
13403 Northwest Freeway  
Houston, TX 77040-6094

on bond of

*(Insert name and address of Contractor)*

, SURETY,

DNA Underground LLC  
16101 S. Swan Road  
Gulfport, MS 39503

, CONTRACTOR,

hereby approves of the final payment to the Contractor, and agrees that final payment to the Contractor shall not relieve the Surety of  
any of its obligations to

*(Insert name and address of Owner)*

City of Diamondhead  
5000 Diamondhead Circle  
Diamondhead, MS 39525

, OWNER,

as set forth in said Surety's bond.

IN WITNESS WHEREOF, the Surety has hereunto set its hand on this date: April 12, 2016

*(Insert in writing the month followed by the numeric date and year.)*

Attest:

(Seal):

Peggy Jackson



U.S. Specialty Insurance Company

*(Surety)*

By:

*(Signature of authorized representative)*

Stephen Wesley Price, Jr. Attorney-in-Fact

*(Printed name and title)*

Resident MS Agent Bottrell Insurance



# HCC

## POWER OF ATTORNEY

AMERICAN CONTRACTORS INDEMNITY COMPANY TEXAS BONDING COMPANY  
UNITED STATES SURETY COMPANY U.S. SPECIALTY INSURANCE COMPANY

KNOW ALL MEN BY THESE PRESENTS: That American Contractors Indemnity Company, a California corporation, Texas Bonding Company, an assumed name of American Contractors Indemnity Company, United States Surety Company, a Maryland corporation and U.S. Specialty Insurance Company, a Texas corporation (collectively, the "Companies"), do by these presents make, constitute and appoint:

**Stephen Wesley Price, Jr.**

its true and lawful Attorney(s)-in-fact, each in their separate capacity if more than one is named above, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver on its behalf:

Surety Bond Number: 1001055434 Amount of Bond: See Bond Form  
Principal: DNA Underground LLC  
Obligee: City of Diamondhead

This Power of Attorney shall expire without further action on December 20<sup>th</sup>, 2017. This Power of Attorney is granted under and by authority of the following resolutions adopted by the Boards of Directors of the Companies:

"Be it Resolved, that the President, any Vice-President, any Assistant Vice-President, any Secretary or any Assistant Secretary shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

Attorney-in-Fact may be given full power and authority for and in the name of and on behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements or indemnity and other conditional or obligatory undertakings, including any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts, and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be binding upon the Company as if signed by the President and sealed and effected by the Corporate Secretary.

Be it Resolved, that the signature of any authorized officer and seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signature or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached."


IN WITNESS WHEREOF, The Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 1<sup>st</sup> day of December, 2014.

AMERICAN CONTRACTORS INDEMNITY COMPANY TEXAS BONDING COMPANY  
UNITED STATES SURETY COMPANY U.S. SPECIALTY INSURANCE COMPANY

State of California

County of Los Angeles SS:



By:   
Daniel P. Aguilar, Vice President


A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

On this 1<sup>st</sup> day of December 2014, before me, Maria G. Rodriguez-Wong, a notary public, personally appeared Dan P. Aguilar, Vice President of American Contractors Indemnity Company, Texas Bonding Company, United States Surety Company and U.S. Specialty Insurance Company who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

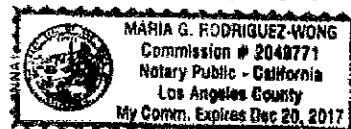
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



(seal)



I, Michael Chalekson, Assistant Secretary of American Contractors Indemnity Company, Texas Bonding Company, United States Surety Company and U.S. Specialty Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Companies, which is still in full force and effect; furthermore, the resolutions of the Boards of Directors, set out in the Power of Attorney are in full force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the seals of said Companies at Los Angeles, California this 12<sup>th</sup> day of April, 2016.

Corporate Seals



  
Michael Chalekson, Assistant Secretary

COST BREAKDOWN  
SEWER MAIN REPLACEMENT AT KAPALAMA

<u>Equipment</u>	<u>Hourly rate</u>	<u>Hours</u>	<u>Total</u>	sewer main replacement
210 Excavator	\$110	8	\$880	
140 Backhoe	\$85	4	\$340	
Skidsteer	\$75	4	\$300	
Dumptruck	\$90	4	\$360	
water pump	\$20	3	\$60	
tools	\$20	8	\$160	

<u>Personel</u>			
Foreman/operator	\$35	10	\$350
project manager	\$40	10	\$400
Pipe layer	\$28	10	\$280
Laborer	\$20	10	\$200
Laborer #2	\$20	10	\$200
Truck driver	\$28	4	\$112

<u>Materials</u>		<u>Units</u>	
610 stone (ton)	\$45	5	\$225
57 stone (ton)	\$45	21	\$945
fill sand (cy)	\$12	24	\$288
muck removal(cy)	\$6	0	\$0
Asphalt (sy)	\$80	4.5	\$360
Pipe and fittings	\$1,300	1	\$1,300
			\$6,760

COST BREAK DOWN  
REPAIR AND RELOCATION KAPALAMA WATER MAIN

<u>Equipment</u>	<u>Hourly rate</u>	<u>Hours</u>	<u>Total</u>	
210 Excavator	\$110	10	\$1,100	Kapalama water main repair
140 Backhoe	\$85	6	\$510	
Skidsteer	\$75	0	\$0	
Dumptruck	\$90	4	\$360	
water pump	\$20	5	\$100	
tools	\$20	10	\$200	

<u>Personnel</u>			
Foreman/operator	\$35	10	\$350
project manager	\$45	10	\$450
Pipe layer	\$28	10	\$280
Laborer	\$20	10	\$200
Laborer #2	\$20	10	\$200
Truck driver	\$28	4	\$112

<u>Materials</u>		<u>Units</u>	
610 stone (ton)	\$45	15	\$675
57 stone (ton)	\$45	8	\$360
fill sand (cy)	\$12	32	\$384
muck removal(cy)	\$6	0	\$0
Asphalt (sy)	\$80	3.5	\$280
			\$5,561
Sewer Main Costs			\$6,760
Contingency			\$10,000
Total Cost			\$12,321
Net Amount			(\$2,321)



*Agenda Item 2016-068*

5000 Diamondhead Circle • Diamondhead, MS 39525-3260

Phone: 228.222.4626 Fax: 228.222.4390

[www.diamondhead.ms.gov](http://www.diamondhead.ms.gov)

April 14, 2016

Mayor and Councilmembers  
5000 Diamondhead Circle  
Diamondhead, MS 39525

Dear Mayor and Councilmembers:

Re: Declaration of surplus property and inventory removal

A cell phone (Fixed Asset #277) utilized in the Public Works Department was damaged. The phone was covered by warranty through C-Spire and was replaced at no charge. The replacement phone has been labeled Fixed Asset #331. Approval is requested to remove Fixed Asset #277 from inventory.

Thank you in advance for your consideration and approval in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Clovis Reed'.

Clovis Reed  
City Manager

CR:jk

# City of Diamondhead

## EQUIPMENT DISPOSITION REQUEST

Department: PUBLIC WORKS

Description of Equipment Item	Quantity Disposed	Month/Year Purchased	Unit Cost	Physical Condition	Disposition Action Recommended
CAULKING	1	6/2015	99.99	P	REPLACED UNDER
FA# 277					WARRANTY DRILL
RETURNED TO		C SPIRE			FA# 331
AS PART OF WARRANTY					NO CHARGE
AGREEMENT					

Approvals:

Date:

Department Head:

FA Coordinator:

City Manager:

Physical Condition Guide:

- P - Poor
- F - Fair
- G - Good
- E - Excellent

*Agenda Item 2016-070*



5000 Diamondhead Circle • Diamondhead, MS 39525-3260  
Phone: 228.222.4626 Fax: 228.222.4390  
[www.diamondhead.ms.gov](http://www.diamondhead.ms.gov)

April 15, 2016

Mayor and Councilmembers  
5000 Diamondhead Circle  
Diamondhead, MS 39525

Dear Mayor and Councilmembers:

Re: Interlocal Agreement with Diamondhead Water & Sewer District

At the April 5, 2016 Formal Meeting, action was taken whereby the Interlocal Agreement with Diamondhead Water & Sewer District was adopted. Since that time, we have presented with a revised agreement for consideration. It is my recommendation to rescind approval of the Interlocal Agreement approved on April 5, 2016.

Thank you for your consideration and approval in this matter.

Sincerely,

Clovis Reed  
City Manager

CR:jk

Agenda Item  
2016-071

**STATE OF MISSISSIPPI  
COUNTY OF HANCOCK**

**INTERLOCAL GOVERNMENTAL COOPERATION AGREEMENT  
BY AND BETWEEN DIAMONDHEAD WATER AND SEWER DISTRICT  
AND THE CITY OF DIAMONDHEAD**

**WHEREAS**, the Board of Commissioners of the Diamondhead Water and Sewer District (the "District") has, from time to time, expressed a desire to share/combine certain governmental operations and facilities and services with other governmental jurisdictions when possible and appropriate in order to ensure greater efficiency as well as lower operating costs, all seeking to retain rates for water and sewer service to a minimum; and

**WHEREAS**, the City of Diamondhead (the "City") by its Mayor and Board of Councilmen (its "Governing Authority") has also expressed its desire and intent to share/combine certain governmental operations with other governmental jurisdictions when possible and appropriate in order to ensure greater efficiency as well as lower operating costs, thereby saving tax dollars and further resulting in lower tax rates for the residents and taxpayers of the City of Diamondhead; and

**WHEREAS**, the City of Diamondhead by and through its Governing Authority, and the Diamondhead Water and Sewer District, through its Board of Commissioners, desire to work together toward in a cost effective manner, in order to achieve all possible savings to the taxpayers of the City and ratepayers of the District; and

**WHEREAS**, in furtherance of the above, the City of Diamondhead and Diamondhead Water And Sewer District desire to enter into an Interlocal Governmental Cooperation Agreement as provided by Miss. Code Ann. § 17-13-1, *et. seq.* (1972); and



**WHEREAS**, the purpose of this Agreement is to provide that during the term hereof and under the conditions set forth in this Agreement, the District will provide certain services and benefits to the City and the City will provide certain services and benefits to the District as more specifically set forth in this Agreement, and which each of the above finds and declares to be of substantially equal value to be exchanged, each to the other; and

**WHEREAS**, there will be no separate or legal or administrative entity created hereby, but the purposes of this Agreement shall be that the governing authorities of the respective entities, namely Diamondhead Water and Sewer District, and the City of Diamondhead, shall each cooperate together within and under the terms of this Agreement to achieve maximum efficiency for governmental services at minimum cost to the taxpayers of the City of Diamondhead and the ratepayers of the Diamondhead Water and Sewer District.

**NOW, THEREFORE, BE IT RESOLVED** by the City of Diamondhead by and through its Mayor and Board of Councilman, and Diamondhead Water and Sewer District, by and through its Board of Commissioners that they do hereby enter into this Interlocal Governmental Cooperation Agreement for the services and purposes hereinafter outlined; said Agreement being authorized by Miss. Code Ann. § 17-13-1, *et. seq.* (1972), and subject to the approval of the Attorney General of the State of Mississippi; and said Agreement being as follows, to-wit:

**SECTION 1. ADMINISTRATION AND ADMINISTRATIVE ENTITY PROVISIONS.**

This Agreement will be administered in accordance with the terms and conditions set forth herein by the designated representative of the City, under the direction of Governing

Authorities, and of the District under the direction of the Board of Commissioners. No separate legal or administrative agency will be created by this Agreement.

## **SECTION 2. STATUTORY AUTHORITIES AND PURPOSE.**

### **(A) AUTHORITY**

1. Municipal Authority: The City of Diamondhead is a municipality established under the Council-Manager plan of government, and vested with all powers and authorities under law, including those granted under the provisions of Title 21 of the Mississippi Code Annotated, granting authority and jurisdiction over all municipal roads, bridges, drainage and other related items within the City's jurisdiction.

2. District Authority: The Diamondhead Water and Sewer District of Hancock County, Mississippi is a body politic organized and established by Hancock County, Mississippi under the authority of Miss. Code Ann. § 19-5-151 *et seq.*, for the purpose of conducting and operating of a combined water and sewer system, and to carry out such purpose or purposes, such district shall have the power and authority to acquire, construct, reconstruct, improve, better, extend, consolidate, maintain and operate such system or systems, and to contract with any municipality, person, firm or corporation for such services and for a supply and distribution of water, for collection, transportation, treatment and/or disposal of sewage and for services required incident to the operation and maintenance of such systems.

3. Section 17-13-5 specifically defines a "local governmental unit" as any county, any incorporated city, town or village, any school district, any utility district, any community college, any institution of higher learning, any municipal airport authority or regional airport authority in the state, any local tourism commission in the state or any public improvement

district created under the Public Improvement District Act. The City of Diamondhead is an incorporated city and the Diamondhead Water and Sewer District is a utility district as included in its definition of a “local governmental unit” above.

Thus, both the City of Diamondhead and the District are qualified entities to enter into this agreement under the provisions of Miss. Code Ann. § 17-31-1, *et seq.*, the “Interlocal Cooperation Act of 1974.”

(B) PURPOSE

Pursuant to the “Interlocal Cooperation Act of 1974”, Section 17-13-1, *et seq.*, local governmental units are allowed to enter into agreements to make the most efficient use of their powers by enabling them to cooperate and to contract with other local governmental units on a basis of mutual advantage and thereby provide services and facilities in a manner pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities. The City and the District desire to make the most efficient use of their powers and cooperate and each with the other on a basis of mutual advantage to provide services and facilities in a manner that will accord best with geographic, economic, population and other factors influencing the needs and development of the ratepayers of the District and the taxpayers of the City.

It is anticipated that the City may require water and sewer services at one or more locations within the service area of the District as well as use from time to time of the benefit of specialized equipment and information possessed by the District. It is further anticipated that the District will, from time to time, as the need and necessity arises, request the support of the City in the constructing, reconstructing and repairing of roads, bridges, ditches driveways, parking

areas, drainage and approaches thereto within the City's and District's jurisdiction and, to the extent, but only to the extent that such requested assistance is within the statutory authority of the City and is such that may be properly jointly exercised and extended to the District under law. To the extent allowed by law and as further agreed between them, the parties hereto wish to provide for the exchange of such services without cost, each to the other, subject to the terms and conditions hereof.

### **SECTION 3. TERMS OF AGREEMENT.**

Each of the parties hereto agrees as follows:

1. The City and the District each within their complete, sole and absolute discretion, agree to make available to the other such specialized equipment owned by it for special projects, to include an operator provided by the Party owning the equipment. Applicable schedules and equipment will be discussed on a case-by-case basis, and any such use and request shall be subject to approval by the General Manager of the District and the City Manager of the City, always subject to facilities availability, priorities, and budgetary limitations.

2. Subject to budget limitations, weather and equipment availability, upon written request to the City by the District, the City may, within the complete, sole and absolute sole discretion of the City, assist the District by using its manpower and equipment to repair or replace, or cause to have repaired or replaced, any pavement on City-controlled property, including but not limited to streets and parking lots which are disturbed by the District in the removal, construction, installation, adjusting and/or repair of any water or sewer infrastructure, including but not limited to wastewater transport pipelines, water pipelines, man holes, valve castings and other such repairs as may be required as a result of such operations. In all events

the District will be responsible for the actual cost of any materials used by the City in such repairs or operations.

3. Subject to budget or other limitations or considerations, upon written request to the City by the District, the City may, within the complete and absolute discretion of the City, allow or grant unto the District such perpetual easements on City property for the construction, installation, and maintenance of water and sewer utilities to serve the residents and ratepayers of the City.

4. Pursuant to Mississippi Code Annotated § 19-5-177, and upon written request by the City, and upon the terms and conditions for such service as contained for each location within the Resolution approving same by the Board of Commissioners of the District, and finally to the extent allowed by law and further agreed between them, in return for the services provided from time to time by the City the District may provide the City with water and sewer service to one or more facilities owned by the City without cost. The provision of water and sewer services shall be subject to limitations which exist and apply to all commercial customers of the District as set forth in the policies and regulations of the District, except as otherwise provided and contained with the Resolution of the Board of Commissioners of the District approving the application for services.

#### **SECTION 4. LIABILITY INSURANCE**

Each such entity shall maintain liability insurance or other funds required by Mississippi Tort Claims Act. The City and the District herein agree that it shall be the responsibility of each party to maintain its own general premises and liability insurance, or other insurance/funds administered by the Mississippi Tort Claims Act, for any activities which are the subject of this

Interlocal Governmental Cooperative Agreement. The parties further agree that no provision in this Agreement waives or extends any person or entity's liability as set forth in Miss. Code Ann. § 11-46-1, *et. seq.* (1972) (as amended), referred to as the Mississippi Tort Claims Act.

#### **SECTION 5. AMENDMENTS**

This Agreement may be amended upon the written agreement of both parties provided such amendment is approved by the Attorney General of the State of Mississippi, as provided in Miss. Code Ann. § 17-13-1, *et seq.*, (1972). Once executed by the authorized representatives of each party, approved by the Attorney General and filed with the Chancery Clerk of Hancock County for recording purposes and otherwise as required by law, such Amendments shall enter in force.

#### **SECTION 6. TERMINATION**

Either Party to this Agreement may, by a majority vote of its governing authority, terminate the whole Agreement for convenience. Prior to holding a vote to terminate the Agreement, the Party wishing to terminate the Agreement shall give the other Party no less than thirty (30) days notice thereof, so that the non-terminating Party will have a chance to resolve any dispute if such exists. In the event of termination of the Agreement, both Parties agree to waive any and all costs incurred under or as a result of this Agreement during the period in which it is in force.

#### **SECTION 7. SEVERABILITY**

If any term, clause or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be deemed illegal, invalid or unenforceable under present or future laws effective during the term hereof by any competent authority, then it is the intention

of the Parties hereto that the remainder of this Agreement, or the application of such term, clause or provision to persons or circumstances other than those to which it is held illegal, invalid or unenforceable, shall not be affected thereby, and it is also the intention of the Parties hereto that in lieu of each term, clause or provision that is illegal, invalid or unenforceable, there be added as a part of this Agreement a term, clause or provision as similar in terms to such illegal, invalid or unenforceable term, clause or provision as may be possible and be legal, valid and enforceable.

#### **SECTION 8. FINANCING.**

The parties may each finance the performance of their individual duties under this Agreement by any means lawfully available to them. Consequently, no financing, staffing, supplying or budgeting of this cooperative undertaking is required. No funds shall be jointly received or disbursed through this Agreement, and no funds shall become joint undertaking funds; therefore, no treasurer or disbursing officer needs to be identified.

#### **SECTION 9. REAL AND PERSONAL PROPERTY.**

It is not the intent of this Agreement that title to any real or personal property shall be transferred between the parties in order to implement this Agreement. Title to all real and personal property shall remain vested in the party in which it is now vested. All real and personal property owned by the City of Diamondhead, at the time of such termination or purchased by the City of Diamondhead pursuant to this Agreement shall remain the property of the City of Diamondhead; all real and personal property owned by Diamondhead Water and Sewer District, at the time of such termination or purchased by the District pursuant to this Agreement shall remain the property of the District. Any transfer of real property interests between the parties shall be by agreement separate and apart here from.

#### **SECTION 10. EFFECTIVE DATE AND TERM OF AGREEMENT.**

This Agreement shall be in full force once 1) this agreement has been duly approved by the governing authorities of the parties; 2) has been executed by duly authorized representatives of each party hereto and 3) has been approved by the Attorney General of the State of Mississippi . Thereafter, this agreement shall continue in full force and effect for the current term of office of the member soft h City Council of the City of Diamondhead, unless cancelled as specified herein.

#### **SECTION 11. APPROVAL BY ATTORNEY GENERAL.**

The City and the District direct that after the execution of this Agreement the same shall be forwarded to the Attorney General of the State of Mississippi for his approval, as provided by law. In the event of disapproval by the Attorney General of any section of the services listed herein, the authorities of the City and of the District will adopt a newly drafted Agreement without said provisions or with such revisions as needed to satisfy any objection and obtain approval by the Attorney General.

#### **SECTION 12. MINUTES**

The Clerk of the City and the Clerk of the Board of Commissioners of the District shall spread this Agreement, after its execution, upon the minutes of the respective governing authorities and shall, upon return of the approval of said Attorney General or its rejection, spread said approval or rejection upon the minutes of the respective governing authorities, noting in the minute book that the original recordation where the Attorney General's approval or disapproval may be found on the minutes, and said Agreement shall be in full force and effect after approval by the Attorney General of the State of Mississippi, and recorded in the Office of



Chancery Clerk of Hancock County, and the Secretary of State, and otherwise as may be required by law.

## **SECTION 12. NOTICES AND REQUESTS**

Whenever the District or the City wish to give or serve any notice, demand, request, or other communication with respect to this Agreement, each such notice, demand, request, or other communication shall be delivered to the Parties as follows:

Diamondhead Water and Sewer District  
Attention: General Manager  
4425 Park Ten Drive  
Diamondhead, Mississippi 39525

City of Diamondhead, Mississippi  
Attention: City Manager  
5300 Diamondhead Circle,  
Diamondhead, Mississippi 39525

*[remainder of page left intentionally blank]*

**IN WITNESS WHEREOF**, I, as Mayor of the City of Diamondhead, the officer duly authorized in the premises by Resolution of the Board of Councilmen of the City of Diamondhead attached hereto, do hereby set and subscribe my signature on behalf of the City of Diamondhead to the foregoing Interlocal Governmental Cooperation Agreement between Diamondhead Water and Sewer District and the City of Diamondhead, Mississippi.

WITNESS MY SIGNATURE this, the \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Thomas M. Schafer, Mayor  
CITY OF DIAMONDHEAD

ATTESTED:

\_\_\_\_\_  
City Clerk


I HAVE APPROVED THIS INTERLOCAL  
GOVERNMENTAL COOPERATION AGREEMENT  
AS TO FORM:

\_\_\_\_\_  
Sean Tindall, Esq.  
City Attorney for the City of Diamondhead, Mississippi

IN WITNESS WHEREOF, I, as Chairman of the Board of Commissioners of Diamondhead Water and Sewer District, being the duly authorized officer, do hereby set and subscribe my signature to the above and foregoing Interlocal Governmental Cooperation Agreement, fully ascribing to the terms thereof for and on behalf of Diamondhead Water and Sewer, the same having been adopted in a duly constituted session.

WITNESS MY SIGNATURE this, the 14<sup>th</sup> day of April 2016.

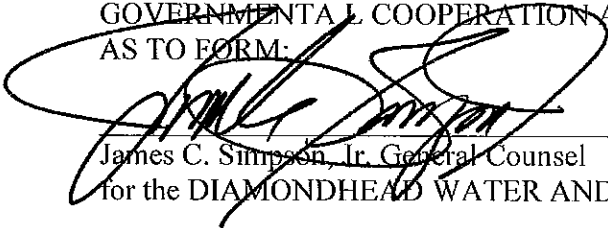
DIAMONDHEAD WATER AND SEWER DISTRICT

By:   
Scott Thomas, Chairman

ATTESTED:

  
BOARD SECRETARY

I HAVE APPROVED THIS INTERLOCAL  
GOVERNMENTAL COOPERATION AGREEMENT  
AS TO FORM:

  
James C. Simpson, Jr. General Counsel  
for the DIAMONDHEAD WATER AND SEWER DISTRICT